

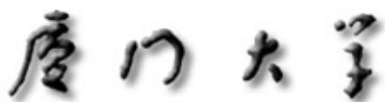
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我国民事再审程序启动主体制度研究



硕士学位论文

我国民事再审程序启动主体制度研究

The Research on the Subject of the Civil Retrial
Procedure in Our Country

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内 容 摘 要

民事再审程序作为民事诉讼特殊救济程序，其设立能够有效地纠正生效裁判中存在的错误，维护当事人的合法权益，确保司法公正，也有利于保障社会的稳定。近年来司法实践表明，再审程序启动主体过于多元化、职权化，使得再审程序没有产生预期的效果，并不能有效地维护当事人的合法权益。本文通过对再审程序启动主体制度进行理论探讨，并结合司法实践中遇到的问题进行分析，对再审程序启动主体制度提出一些改革建议。

本文除引言和结语外，分为三章进行论述。

第一章“我国民事再审程序启动主体制度相关规定及缺陷”。该章是对我国民事再审程序启动主体制度相关法律规定进行介绍，并且分析了法院、检察院、当事人、案外人四类再审程序启动主体法律规定中存在的缺陷。

第二章“外国民事再审程序启动主体制度比较”。该章是通过对大陆法系和英美法系的再审程序启动主体制度比较分析，总结两大法系民事再审程序启动主体制度相关规律，为我国民事再审程序启动主体制度的重构提供有益借鉴。

第三章“我国民事再审程序启动主体制度重构”。该章首先明确民事再审程序启动主体制度重构价值取向，提出民事再审启动主体设置应当平衡有错必纠与既判力之间关系，同时也应当体现“当事人主义”原则。取消法院依职权启动再审权，限制检察院的再审抗诉权，完善当事人和案外人再审程序启动主体制度。

关键词：民事再审；启动主体；重构

ABSTRACT

As the special civil relief procedure, the civil retrial procedure is designed to correct mistakes in the affective judgment, protect the lawful rights and interests of the parties and maintain social stability. In recent years the judicial practice indicates that it doesn't achieve desired results and can't effectively safeguard rights and interests of the parties in adopting the pluralistic and powerful subject in civil retrial procedure. The dissertation aims at providing some advices about system of initiating the subject in the retrial procedure through the theoretical exploration of the system and in combination with analyzing problems in the judicial practice.

Apart of preface and conclusion, the dissertation is divided into three parts as follows.

Chapter 1 is "Related Regulations and Defects about Subjects initiating Civil Retrial Procedure in China". This Chapter introduces related laws and regulations and analyzes their defects where they prescribe court, procuratorate, litigants or the third party as the subject to initiate the retrial procedure. This lays the groundwork for the below to talk about how to rebuild subject system in the retrial.

Chapter 2 is "Comparison of Subjects in Foreign Civil Retrial Procedure". This chapter summarizes laws regarding the subject system in the common law legal system and civil law legal system and provides reference for the reform of Chinese subject system in the civil retrial procedure through the comparison and analysis of two legal systems.

Chapter 3 is "China's Reform of the Subject System in the Civil Retrial Procedure". These chapters firstly states clearly value orientation of the reconstruction of the subject system, and then advices to balance the relationships between the practice that wrong shall be corrected and the binding

force and reflect the principle of “Party Doctrine” when subject in the civil retrial is set. In addition, this chapter also suggests to remit rights of initiating retrial of the people’s courts, restricts rights of lodging protest initiated by the people’s procuratorate and perfect system of litigants and the third party as the subject in the retrial.

Key Words: Civil Retrial; Subject to initiate retrial procedure; Reconstruction

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